

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MICHAEL NELSON, #02461-095

PETITIONER

VS.

CIVIL ACTION NO. 5:05CV13-DCB-JCS

MICHAEL PETTIFORD, WARDEN FCI-YAZOO CITY

RESPONDENT

MEMORANDUM OPINION AND ORDER

This matter is before the Court, sua sponte, for consideration of dismissal and/or transfer. Petitioner Nelson, an inmate incarcerated at the Federal Correctional Institute, Yazoo City, Mississippi, filed this petition for habeas relief pursuant to 28 U.S.C § 2241. Having reviewed the petition, the Court finds that it is substantially similar to Nelson's prior petition in Civil Action Number 5:04CV139BrSu.

In that case, the Court determined, despite Nelson's characterization of the petition as one arising under § 2241, that Nelson actually sought relief properly accorded under 28 U.S.C. § 2255. Nelson v. Pettiford, 5:04CV139BrSu, at p. 4 (S.D. Miss. June 18, 2004)(docket entry number 4). The Court dismissed Nelson's § 2241 claim, and having determined that Nelson had previously filed a §2255 in his sentencing court, the Court transferred the remaining § 2255 claim to the United States Court of Appeals for the Fifth Circuit for a determination of whether the successive § 2255 motion should be allowed.¹ Inasmuch as Nelson's current filing in this court is a reiteration of his prior petition, it shall meet the same fate. Accordingly, it is hereby

¹ Ultimately, the Fifth Circuit denied Nelson permission to file a successive petition and cautioned him against "further filing of repetitious or frivolous requests to file a successive motion." In re Michael Nelson, No. 04-60576, at p. 2-3 (5th Cir. November 10, 2004).

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the Clerk of this Court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED, this the 20th day of April, 2005.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE